IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

Crl.Rev.Pet.No. 3020 of 2007()

CRA.750/06 OF SESSIONS COURT, KOTTAYAM
CC.485/04 OF JFCM-III, KOTTAYAM

REVN. PETITIONER: APPELLANT/ACCUSED

CHANDRANANDAN, S/O NARAYANAN,
KOTAHMASSERRY HOUSE, CHENGALAM NORTH,
CHENGALAM VILLAGE.

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENTS: RESPONDENT

STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR HIGH COURT OF
KERALA ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3020 OF 2007 B

Dated this the 22nd day of August, 2007

O R D E R

The revision petitioner, who was the accused in C.C.No.485/2004 on the file of the JFCM-III, Kottayam, challenges the conviction entered and the sentence passed concurrently by the courts below for offences punishable under sections 451 and 354 IPC.

2. The case of the prosecution can be summarised as follows:-

On 11.4.03 at about 9 a.m. the accused criminally trespassed into the house of PW3 at Chengalam village, Thiruvarpu Panchayat (House No.402 of Ward No.I, Irupathilchira House) and got into the bedroom by forcibly opening the door with the intention of outraging the modesty of PW3 and tore the blouse worn by her and pushed her down and outraged her modesty by fondling her breasts while she was in a recumbent position.

3. On the side of the prosecution 5 witnesses were examined as PWs 1 to 5 and 4 documents were marked as Exts.P1 to P4 and the torn blouse was marked as MO1.

4. The accused denied the incriminating circumstances appearing against him during his examination under section 313 (1)(b) Cr.P.C. He did not adduce any defence evidence.

5. The learned Magistrate after trial, as per judgment dated 3.11.06 convicted the revision petitioner for the offences charged against him and sentenced him to undergo simple imprisonment for two months and to pay a fine of Rs.1,000/- (Rupees one thousand only) and on default to pay the fine, to suffer simple imprisonment for a period of one month under section 451 IPC and to pay a fine of Rs.2,000/- (Rupees two thousand only) and on default to pay the fine, to suffer simple imprisonment for one month under section 354 IPC. An appeal preferred by the revision petitioner as Criminal Appeal No.750/06 before the Session Court, Kottayam was dismissed. Hence, this revision.

6. Eventhough the learned counsel for the revision petitioner assailed the conviction on various grounds, I am not inclined to interfere with the conviction since the same has been recorded after a careful evaluation of the oral and documentary evidence in the case. Both the courts have believed the credible

testimony of PW3, the victim, as well as her sister PW4, notwithstanding the hostility of PW1, a neighbour who, in the normal case, cannot be expected to see an occurrence taking place inside the bed room of the house of PW3. In the absence of any infirmity in the appreciation of evidence of the court below, this court, sitting in the rarefied revisional jurisdiction, will be loathe to interfere with the findings recorded by the courts below which are the final courts of fact. I, therefore, confirm the conviction recorded against the revision petitioner.

7. What now survives for consideration is the legality or otherwise of the sentence imposed on the revision petitioner. Eventhough the motive put forward by the revision petitioner as a defence that he was falsely implicated as he was witness to a transaction entered into by the brother of PWs 3 and 4, was not accepted by the courts below, the fact remains that there was some misgiving between the brother of PW3 and the accused. While the hostility between the said persons may not constitute motive for him to stake the reputation of his sister(PW3) that may have some relevance in the fixing of the sentence to be imposed on the revision petitioner. Accordingly, the sentence imposed on

him by the courts below is set aside and instead, he is sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, to suffer simple imprisonment for one month under section 451 IPC and to pay a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, to suffer simple imprisonment for a period of one month under section 354 IPC. The fine amount shall be remitted within 60 days, failing which he shall undergo the default sentence. The fine amount, as and when realised, shall be paid to PW3 by way of compensation under section 357(1) Cr.P.C.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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